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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,613	08/13/2001	Galen M. Gareis	6500-1801.2	9701

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[REDACTED] EXAMINER

MAYO III, WILLIAM H

ART UNIT	PAPER NUMBER
2831	

DATE MAILED: 12/03/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/929,613	GAREIS, GALEN M.	
	Examiner William H. Mayo III	Art Unit 2831	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondenc address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 8/13/01.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-6 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION*****Priority***

1. If applicant desires priority under 35 U.S.C. 120 based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_\_" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

***Information Disclosure Statement***

2. The information disclosure statement filed August 13, 2001 has been submitted for consideration by the Office. It has been placed in the application file and the information referred to therein has been considered.

***Oath/Declaration***

3. This application presents a claim for subject matter not originally claimed or embraced in the statement of the invention. Specifically, the major axis having a length larger than the length of the minor axis was not claimed in the parent case. A supplemental oath or declaration is required under 37 CFR 1.67. The new oath or

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declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3 and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 3 recites the limitation "said pocket" in line 4, which are confusing and render the claim indefinite. It is unclear whether the applicant is referring to the previous mentioned at least one pocket or introducing additional pockets.

7. Claim 5 recites the limitation "said pocket" in line 9, which are confusing and render the claim indefinite. It is unclear whether the applicant is referring to the previous mentioned at least one pocket or introducing additional pockets.

8. Claim 6 recites the limitation "said pocket" in line 6, which are confusing and render the claim indefinite. It is unclear whether the applicant is referring to the previous mentioned at least one pocket or introducing additional pockets.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Guilleaume (Pat Num. 514,925). Specifically, with respect to claim 1, Guilleaume discloses a cable separator spline (c') capable of being used with communication cable and comprising a longitudinally extending spline (Figs 3-5) having a plurality of spaced longitudinally extending pockets (interior pockets of the splines), a cross section of the spline (c') having a major axis (top to bottom) and a minor axis (left to right) wherein the major axis (top to bottom) has a larger length (indicated at  $d_2$ ) than the length (indicated at  $d_1$ ) of the minor axis (left to right) and wherein at least one pocket (top and bottom pocket) is on the major axis and at least one pocket (left and right pocket) is on minor axis (Fig 3). With respect to claim 2, Guilleaume discloses that the major axis (top to bottom) is substantially perpendicular to the minor axis (left to right) and each of the pockets (interior pockets of the splines) longitudinally extends substantially parallel to each other (Figs 3-5). With respect to claim 4, Guilleaume discloses that the spline (c') has a first (top pocket), second (bottom pocket), third (left pocket), and fourth (right pocket) spaced longitudinally extending open pocket (Figs 3-5), wherein a cross section of the spline (c') has a major axis (top to bottom) and a minor axis (left to right), and wherein the first and second pockets (top and bottom pockets) have substantially the same cross sectional area (Figs 3-5) and the third and fourth pockets (left and right pockets) have substantially the same cross sectional area (Figs 3-5).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guilleaume (Pat Num. 514,925). Guilleaume discloses a cable separator spline (c') comprising a longitudinally extending spline (Figs 3-5) as claimed above in claim 1. Specifically, with respect to claim 5, Guilleaume discloses that the major axis (top to bottom) is substantially perpendicular to the minor axis (left to right), the third and fourth pockets (left and right pockets) have substantially the same cross sectional area (Figs 3-5) and the first (top pocket), second (bottom pocket), third (left pocket), and fourth (right pocket) spaced longitudinally extending open pockets are substantially parallel to each other (Figs 3-5).

However, Guilleaume doesn't necessarily disclose the pockets having a cross sectional area which is 75% or less than the cross sectional of a circular envelope of a cable (claims 3, 5, & 6), nor the first and second pockets having a depth greater than the depth of the third and fourth pockets (claim 6).

With respect to claims 3 and 5-6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cable separator spline of Guilleaume to comprise the pockets to have a cross sectional area which is 75% or less than the cross sectional of a circular envelope of a cable, since it has been held that where the general conditions of a claim are disclosed in the prior art,

discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cable separator spline of Guilleaume to comprise first and second pockets having a depth greater than the depth of the third and fourth pockets, since it has been held that more than mere change of form or rearrangement of parts is necessary for patentability. *Span-Deck Inc v Fab-Con, Inc*, (CA 8, 1982) 215 USPQ 835.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They are Despard (Pat Num 6,310,295), which discloses a cable spline having a metallic surface.

### ***Communication***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Mayo III whose telephone number is (703) 306-9061. The examiner can normally be reached on M-F 8:30 a. m.-6:00 p.m.(alternating Friday's off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (703) 308-3682. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

305-3432 for regular communications and (703) 305-1341 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

WHM III  
November 15, 2001

*Dean A. Reichard 11/16/01*  
DEAN A. REICHARD  
SUPERVISORY PATENT EXAMINER  
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